

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Revision Application No. 280 / 2016

Ganesh s/o Bapurao Kundale
Age 29 years, Occu. At present Nil,
R/o. Moti Nagar, Latur,
Taluka and District Latur.

...Applicant

Versus

1. The State of Maharashtra,
Through Gandhi Chowk Police Station, Latur.
Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay,
Bench at Aurangabad.
2. Dr. Shivhar s/o Kerba Yelurkar,
Age : 61 years, Occu. : Retired Govt. Servant,
R/o.Katkur Road, Behind Shani Mandir,
Taluka and District Latur.

...Respondents

Senior Advocate Mr. Rajendra Deshmukh i/by Mr. Govind A. Kulkarni

Advocate for the Applicant

Mr. S. P. Tiwari, APP for Respondent No.1/State.

Mrs. Ashwini A. Lomte, Advocate for Respondent No. 2

CORAM : KISHORE C. SANT, J.

DATE : 23rd SEPTEMBER, 2022.

ORAL JUDGMENT :

Heard the parties at length. The matter is taken up for final disposal at the admission stage with consent of the parties.

1. This Revision Application is arising out of judgment and order passed by the learned Sessions Judge, Latur dated 29.09.2016 in Criminal Appeal No.29/2015. Vide impugned judgment and order, the learned Sessions Judge has dismissed an appeal filed by the present Applicant, challenging judgment and order passed by the trial Court dated 17.03.2015 passed in S.T.C.C. No.34/2013. In appeal, the learned Appellate Court has set aside the conviction under Section 353 and 341 of Indian Penal Code, 1860 (IPC for short) and maintained conviction for the offence punishable under Section 294 and 506 of IPC. The trial Court had held the Applicant guilty of the offence punishable under Sections 294, 353, 341 and 504 of the IPC .

2. The Applicant was directed to suffer Rigorous Imprisonment ('R.I.'

for short) for two months and to pay fine of Rs.1000/- for the offence punishable under Section 353 of IPC and in default to suffer R.I. for one month. For the offence punishable under Section 341 of IPC, the sentence was to suffer Simple Imprisonment ('S.I.' for short) for one month and to pay a fine of Rs.500/- and in default to suffer S.I. for fifteen days. For the offence punishable under Section 294 of IPC, the sentence was to suffer R.I. for two months and to pay fine of Rs.1000/- and in default to suffer R.I. for one month. For the offence punishable under Section 504 of IPC, the sentence was to suffer R.I. for two months and to pay a fine of Rs.500/- and in default to suffer further R.I. for one month.

3. The Accused came to be acquitted of the offence punishable under Section 506 of IPC. Sentences were directed to run concurrently. There was an order to pay amount of Rs.2000/- by way of compensation to be paid to the Informant, Respondent No.2 herein. By the impugned judgment and order, the learned Sessions Judge acquitted the Applicant of offences punishable under Sections 353, 341 of the IPC and confirmed the conviction for the offence punishable under Section 294 and 504 of the IPC. The order of sentence was modified for the offence under

Section 294 and he was directed to suffer S.I. till rising of the Court and to pay fine of Rs.2000/- and in default to suffer S.I. for one month. For the offence punishable under Section 504, also the sentence was modified to S.I. till rising of the Court and to pay fine of Rs.2000/- and in default to suffer S.I. for one month. So far as compensation, the order was maintained as it is. Accused was directed to surrender and amount of fine towards for the offence punishable under Section 343, 341 was directed to be refunded to the Applicant. The Applicant paid the fine amount of Rs.4000/- in the Sessions Court on the date of judgment itself i.e. on 29.09.2016. It is this order which is assailed by the Applicant in this Revision.

4. The facts of the case in short are as under;

The Informant/Respondent No.2 was working as an Assistant Director (Leprosy and Malaria) at Latur, whereas this Applicant was working in the Zilla Parishad. It is informed that when the Informant was in his office, the Applicant had been to the chamber of the Informant. The Applicant threatened the Informant and asked him to withdraw police complaint, filed by the Informant. He thereafter started

using filthy language calling wife of the Informant as a 'whore' and said as to why the Informant is taking shield of such a lady. He restrained the Informant and thereby interfered in the official work of the Informant. When the incident took place, two three other persons working in the Office of Informant, were also present.

. On the basis of the information, the offence was registered. The Police registered the crime. Further statements of the persons, who were sitting in the Chamber of the Informant, were recorded.

5. After filing of the charge-sheet, the Prosecution was launched. The Informant came to be examined as PW-1. He supported the case of Prosecution. In his evidence, he stated that prior to some days of incident, the Informant had lodged a complaint against the Applicant with his Superior Officer. Therefore, the Applicant was bringing pressure upon the Informant to withdraw the case and for that purpose, he used to give threats to the Informant. Because of the complaint, this Applicant was transferred from the office of the Informant to some other office. The Applicant however even from that office by making telephonic calls, used to give threats to the Informant. On the date of

incident, the Applicant came to his chamber and uttered obscene words referring to the wife of the Informant. When Informant started leaving the chamber, Applicant stopped him and did not allow him to leave chamber. The next witnesses were Nitin Potwar – PW-2 and Rajkumar Patil – PW-3. Both were declared as hostile witnesses. PW-4 – Dattatraya Kamble partly supported prosecution and also was declared hostile regarding the main incident. According to PW-4, on the day of incident, he was sitting on the bench out side of the chamber of Informant. He heard noise as word ‘थांबा’ from the chamber and he therefore, went to the chamber, where he saw the Applicant coming out of the chamber alongwith two three other persons and the Informant. One Sudhakar, A.S.I. stated in his evidence that he carried the investigation and proved spot panchanama. In his statement, he stated that there were no complaints made by the Informant before this complaint. The statement of the accused under Section 313 came to be recorded. The learned JMFC found Accused guilty for the offences as alleged, except an offence under Section 506 of IPC. It is this judgment and order, the Applicant challenged before the Sessions Judge, by filing Criminal Appeal No.29/2015. As stated earlier, the leaned Sessions

Judge maintained conviction only for the offences punishable under Sections 294 and 504 of IPC and acquitted the Applicant from the offences under Sections 353 and 341 of IPC. He further modified the sentence and directed Applicant to undergo the simple imprisonment till rising of the Court.

6. It is strenuously argued by the learned Advocate for the Applicant that there is no evidence to prove case of the Prosecution. He stated that there is no evidence to show that there were utterances in the name of wife of the Informant to attract Section 294 of IPC. There were even complaints made against the Informant before the Human Rights Commission (HRC), in which a fine is imposed by the HRC. It is tried to bring on record that the Informant is of quarrel some nature and he is in habit of filing false cases. It is further stated that once the transfer order which was allegedly made because of the complaint by the Informant, was cancelled by the MAT, Aurangabad. There was no reason for the Applicant to carry any grudge against the Informant. There is no Call Details Record (CDRs) produced on record. He pointed out that the omission from the evidence of the Informant in respect of phone calls.

7. From the evidence of PW-2, PW-3 and PW-4, since have turned hostile, there is no evidence to support the case of the Prosecution except Informant. In his submission to base conviction on a solitary evidence of the Informant without any corroboration is totally illegal. The Investigating Officer did not record statement of wife of the Informant. It is further submitted that she has never made any complaint against the Applicant and thus, there is nothing to show that the Accused has done any act as alleged against him. Observation of the Appellate Court in Paragraph No. 27, are perverse. It is pointed out that certain portion from the report and the evidence is reproduced, which would show that certain statements in respect of the wife of the Informant has not come in the deposition. Still the learned Lower Appellate Court has observed that no other inference can be drawn that the words were used for the wife of the Informant. Further the observation is criticized as being perverse that Court has held the utterances to be provocative. Thus it is main submission that the evidence is not sufficient enough to hold the Applicant guilty. There was no motive for the Applicant to abuse the Informant and his wife. The Prosecution has utterly failed to prove guilt of the accused for want of

corroboration from independent witnesses. So far as Section 504, it is submitted that there is no breach of public peace and Applicant prayed for quashing and setting aside the judgment and order.

8. As against this, the learned APP supported the judgment of the Appellate Court. He pointed out from Paragraph No.49 and 50 of the judgment and supported the observations and the findings that the utterances by the Applicant were only towards the wife of the Informant, as there was no question of uttering such words for any other person in the context. Further he argued on the scope of Revision. He submitted that unless the findings recorded is totally perverse or based upon no evidence. It is only in such cases, the findings can be interfered in a Revision.

9. The learned Advocate (appointed) for Respondent No.2 vehemently argued that the case is proved by the Prosecution by examining the Informant. She pointed out the answer given to Question No.20, wherein the Applicant accepts that he had threatened the Informant and had also committed criminal intimidation. She further pointed out the Section 294, which reproduced under:

294. Obscene acts and songs.-Whoever, to the annoyance of others-

(a) does any obscene act in any public place, or
(b) sings, recites or **utters** any obscene song, ballad or **words**, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]

. Though PW-4 turned hostile, but still his evidence sufficient enough to at least draw a conclusion that in the chamber of the Informant, the Applicant was present alongwith other two three persons and they all came out of the chamber alongwith Informant. So his evidence can be used at least for the purpose to show that the Applicant was in chamber, which is discussed in Paragraph No.19 of the judgment of the trial Court.

10. The learned Advocate for the Applicant argued in response to the arguments of the learned APP and learned Advocate for Respondent No.2 submitted that, since the Applicant is already acquitted from the offences punishable under Sections 353 and 506 of IPC, reference answer of Question No.20 is unwarranted. He relied upon the judgment in the case of **Tahsildar Singh and another Vs. State of U.P.**, reported in AIR 1959 SC 1012 and states that in this case, the omissions needs to be

treated as contradiction. He submitted that the Appellate Court failed to appreciate that the version of PW-1 in the Court, is in contradiction to the statement before the Police and thus Section 294 of IPC is not attracted.

11. Learned APP and the learned Advocate for the Respondent No.2 relied upon two judgments, one in the case of **Amit Kapoor Vs. Ramesh Chander & Anr.** reported in 2012 ALL MR (Cri) 3806 (S.C.) and second in the case of **Sandeep Walia Vs. Sanjeev Dulta**, 2016 ALL MR (Cri) JOURNAL 580.

12. Considering the limited scope of the Revision, the present judgment needs to be tested.

. The learned Advocate for the Applicant specifically pointed out from Paragraph Nos. 17 to 20 of the judgment of Tahsildar Singh and another (supra). Paragraph No.18 is reproduced below.

“Further, there are occasions when we come across two statements made by the same person at different times and both of them cannot stand or co-exist. There is an inherent repugnancy between the two and therefore, if one is true, the other must be false.”

. Thus, in this case he states that the statement in vernacular recorded in the judgment as reproduced by the trial Court are seen, there appears to be a clear contradiction, when compared to the deposition in the Court. Both statements cannot co-exist and therefore contradiction is proved. This Court finds it difficult to accept this submission by reading both the statements. It cannot be concluded that the statements before the Police and one before the Court are so inconsistent or irreconcilable with each other, that both of them cannot co-exist. In humble opinion, therefore this judgment is not applicable in the present case.

13. As regards the second judgment in the case of Amit Kapoor (supra), it is seen that in Paragraph No.12 wherein the scope of jurisdiction of the Court under Section 397 is discussed. It is observed that the jurisdiction under Section 397 is very limited. The legality, propriety or correctness of an order passed by a Court is the very foundation of exercise of jurisdiction under Section 397, but ultimately it also needs to see that justice is done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where judicial discretion is

exercised arbitrarily. In this case, this Court does not find any palpable error. This Court does not find that there is non-compliance with the provisions of law or that the decision is completely erroneous or the discretion is exercised arbitrarily.

14. One of the defences raised by the Applicant is that in view of a complaint made by the Informant, he was transferred to some other department. He had challenged that order of transfer before Maharashtra Administrative Tribunal (MAT), Aurangabad, wherein even the Informant was made a party. The transfer order was set aside by the Tribunal. Applicant submits that thereafter there was no reason for the Applicant to carry any grudge against the Informant. In fact this shows that the Applicant was of the view that he is transferred because of the complaint of the Informant and therefore he had made Informant as a party in proceeding before the Tribunal. Thus it is Applicant, who has some motive against the Informant.

15. Further submission that the wife of Informant has not made any complaint or that she is not examined, need not be considered for a simple reason that it is nobody's case that she was present at the time of

incident. One more thing that needs to be considered in this case that it has already come on record that the Applicant was not working in the office of the Informant. As such there was no reason for the Accused to be in the chamber of the Informant. It is not a case of defence that he had gone there for some work or he was called by the Informant. He has neither challenged the fact of his presence in the chamber, nor he tried to explain the same. In view of above discussion, it is seen that the learned Sessions Court has rightly scrutinized the entire evidence and has rightly held the Applicant guilty of the offences punishable under Sections 294 and 504 of IPC and minimum sentence. The judgment and order impugned does not require any interference and same is maintained. The Revision Application is disposed of accordingly.

16. Learned Advocate for Respondent No.2 is appointed through Legal Aid, she shall be paid Rs.5000/-. This Court appreciates her efforts and the assistance rendered by her.

[KISHORE C. SANT, J.]